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SENATE BILL 1123

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

FERNANDO R. MACIAS

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO GRAND JURIES; CHANGING PROCEDURES ATTENDANT TO GRAND
JURY PROCEEDINGS; PROVIDING THE TARGET OF A GRAND JURY
PROCEEDING WITH NOTICE OF HIS TARGET STATUS; AMENDING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-6-3 NMSA 1978 (being Laws 1969,
Chapter 276, Section 3) is amended to read:

"31-6-3. CHALLENGE TO GRAND JURY. -- Any person held to
answer for an offense by grand jury indictment, upon arraignment
to the charge therein, by motion to quash the indictment stating
with particularity the ground therefor, may challenge the
validity of the grand jury. A failure to file such motion is a
waiver of the challenge. Grounds that may be presented by such
motion are limited to the following:

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1 A. the grand jury was not selected in accordance
2 with law;

3 B. a member of the grand jury returning the
4 indictment was ineligible to serve as a juror; [~~or~~]

5 C. a member of the grand jury returning the
6 indictment was not qualified to serve due to a conflict of
7 interest, bias, partiality or inability to follow the law; or

8 [~~C.~~] D. a member of the grand jury returning the
9 indictment was a potential witness [against the person indicted]
10 in the grand jury proceedings. "

11 Section 2. Section 31-6-4 NMSA 1978 (being Laws 1969,
12 Chapter 276, Section 4, as amended) is amended to read:

13 "31-6-4. TIME AND PLACE FOR HEARING--PRIVACY OF HEARINGS--
14 WITNESSES PERMITTED TO HAVE ATTORNEY PRESENT. --

15 A. A grand jury shall conduct its hearing during the
16 usual business hours of the court which convened it. Hearings
17 and deliberations may be conducted at any place ordered by the
18 convening judge and provided by the court. Inspections or grand
19 jury views of places under inquiry may be made when directed by
20 the foreman wherever deemed necessary within the county, but no
21 oral testimony or other evidence may be received except during
22 formal private sessions.

23 B. All deliberations will be conducted in a private
24 room outside the hearing or presence of any person other than
25 the grand jury members. All taking of testimony will be in

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1 private with no persons present other than the grand jury, the
2 persons required or entitled to assist the grand jury and the
3 attorney, if any, of the target [witness].

4 C. Persons required or entitled to be present at the
5 taking of testimony before the grand jury may include the
6 district attorney and the attorney general and their staffs,
7 interpreters, court reporters, security officers, the witness
8 and an attorney for the target [witness]; provided that such
9 security personnel may be present only with special leave of the
10 district court and are neither potential witnesses nor otherwise
11 interested parties in the matter being presented to the grand
12 jury. If a target [witness] has his attorney present, the
13 attorney may ~~[be present only while the target witness is~~
14 ~~testifying and may advise the witness but may not speak so that~~
15 ~~he can be heard by the grand jurors or otherwise participate in~~
16 ~~the proceedings]~~ participate in the proceedings by assisting the
17 target's testimony and assisting other witnesses who testify on
18 behalf of the target. "

19 Section 3. Section 31-6-7 NMSA 1978 (being Laws 1969,
20 Chapter 276, Section 7, as amended) is amended to read:

21 "31-6-7. ASSISTANCE FOR GRAND JURY. --The district court
22 shall assign court reporters, bailiffs, interpreters, clerks or
23 other persons as required to aid the grand jury in carrying out
24 its duties. The attorney general, when requested by the
25 district court, shall assist the grand jury. The district

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1 attorney shall attend the grand jury, examine witnesses and
2 prepare indictments, reports and other undertakings of the grand
3 jury. The prosecuting attorney and all grand jurors shall
4 conduct [~~himself~~] themselves in a fair and impartial manner at
5 all times [~~when assisting~~] during the grand jury proceedings."

6 Section 4. Section 31-6-11 NMSA 1978 (being Laws 1969,
7 Chapter 276, Section 11, as amended) is amended to read:

8 "31-6-11. EVIDENCE BEFORE GRAND JURY. --

9 A. Evidence before the grand jury upon which it may
10 find an indictment is [~~the~~] that which is lawful, competent and
11 relevant, including the oral testimony of witnesses under oath
12 and any documentary or other physical evidence exhibited to the
13 jurors. The sufficiency [~~or competency~~] of the evidence upon
14 which an indictment is returned shall not be subject to review
15 absent a showing of bad faith on the part of the prosecuting
16 attorney assisting the grand jury.

17 B. It is the duty of the grand jury to weigh all the
18 evidence submitted to it, and when it has reason to believe that
19 other lawful, competent and relevant evidence is available that
20 may [~~explain away or~~] disprove or reduce a charge or accusation
21 or that would make an indictment unjustified, then it should
22 order the evidence produced. [~~The target shall be notified of~~
23 ~~his target status and be given an opportunity to testify, if he~~
24 ~~desires to do so, unless the prosecutor determines that notifi-~~
25 ~~cation may result in flight, endanger other persons, obstruct~~

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1 ~~justice or the prosecutor is unable with reasonable diligence to~~
2 ~~notify said person. A showing of reasonable diligence in~~
3 ~~notifying the target by the prosecutor is not required unless~~
4 ~~and until the target establishes actual and substantial~~
5 ~~prejudice as a result of an alleged failure by the prosecutor to~~
6 ~~exercise reasonable diligence in notifying the target of his~~
7 ~~target status before the grand jury. The prosecuting attorney~~
8 ~~assisting the grand jury shall present evidence that directly~~
9 ~~negates the guilt of the target where he is aware of such~~
10 ~~evidence.] The district attorney assisting the grand jury, when~~
11 ~~he is aware of the existence of other lawful, competent or~~
12 ~~relevant evidence, shall present that evidence to the grand~~
13 ~~jury.~~

14 C. A district attorney shall use reasonable
15 diligence to notify a person in writing that the person is the
16 target of a grand jury investigation. Unless the district
17 attorney determines that providing notification may result in
18 flight by the target, result in obstruction of justice or pose a
19 danger to another person, the target of a grand jury
20 investigation shall be notified in writing of the following
21 information:

- 22 (1) that he is the target of an investigation;
23 (2) the nature of the crime being investigated,
24 including the elements of the crime and any applicable statutory
25 citations;

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1 (3) the target's right to testify by way of
2 questioning conducted by the target's counsel, no sooner than
3 ten days after service of the target notice, unless the target
4 agrees to testify sooner;

5 (4) the target's right to choose to remain
6 silent;

7 (5) the statutory requirement that the grand
8 jury be presented with all lawful, competent and relevant
9 evidence; and

10 (6) the target's right to present instructions
11 regarding applicable lesser offenses to the grand jury."

12 Section 5. EFFECTIVE DATE. -- The effective date of the
13 provisions of this act is July 1, 1997.